

Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector (repealed)

PART II

THE INTEGRATED ADMINISTRATION AND CONTROL SYSTEM

TITLE III

CONTROLS

CHAPTER I

Common rules

Article 26

General principles

1 Administrative controls and on-the-spot checks provided for in this Regulation shall be made in such a way as to ensure effective verification of compliance with the terms under which aids are granted and of the requirements and standards relevant for cross-compliance.

2 The applications for aid concerned shall be rejected if the farmer or his representative prevents an on-the-spot check from being carried out.

Article 27

Announcements of on-the-spot checks

1 Provided that the purpose of the control is not jeopardised, on-the-spot checks may be announced. The announcement shall be strictly limited to the minimum time period necessary and shall not exceed 14 days. However, for on-the-spot checks concerning livestock aid applications, the notice shall, except in duly justified cases, not exceed 48 hours. Furthermore, where the legislation applicable to the acts and standards relevant to cross-compliance requires the on-the-spot check to be unannounced, those rules shall also apply in the case of on-the-spot checks related to cross-compliance.

2 Where appropriate, on-the-spot checks provided for in this Regulation and any other controls provided for in Community rules shall be carried out at the same time.

CHAPTER II

Controls with regard to eligibility criteria

Section I

Administrative controls

Article 28

Cross-checks

1 The administrative controls referred to in Article 20 of Regulation (EC) No 73/2009 shall permit the detection of irregularities, in particular the automated detection using computerised means, including cross-checks:

- a on declared payment entitlements and on declared parcels, respectively, in order to avoid undue multiple granting of the same aid in respect of the same calendar or marketing year and to prevent any undue accumulation of aid granted under area-related aid schemes listed in Annexes I and IV to Regulation (EC) No 73/2009;
- b on the payment entitlements to verify their existence and the eligibility for aid;
- c between the agricultural parcels as declared in the single application and the reference parcels as contained in the identification system for agricultural parcels to verify the eligibility for aid of the areas as such;
- d between the payment entitlements and the area determined in order to verify that the entitlements are accompanied by an equal number of eligible hectares as defined in Article 34(2) of Regulation (EC) No 73/2009;
- e by means of the computerised database for bovine animals, to verify eligibility for the aid and to avoid undue multiple granting of the same aid in respect of the same calendar year;
- f between the agricultural parcels as declared in the single application and plots subjected to official examination that have been found to comply with the requirements of Article 87(1) of Regulation EC (No) 73/2009;
- g between the agricultural parcels as declared in the single application and the parcels authorised for cotton production by the Member State in accordance with Article 89 of Regulation (EC) No 73/2009;
- h between the declarations of the farmer in the single application to be a member of an approved inter-branch organisation, the information under Article 13(5)(b) of this Regulation and the information transmitted by the approved inter-branch organisations concerned, to verify eligibility for the increase of the aid provided for in Article 92(2) of Regulation (EC) No 73/2009;
- i between the information provided in the delivery contract referred to in Article 94 of Regulation (EC) No 73/2009 and the information on deliveries provided by the sugar manufacturer.

2 Indications of irregularities resulting from cross-checks shall be followed-up by any other appropriate administrative procedure, and where necessary, by an on-the-spot check.

3 Where a reference parcel is subject to an aid application by two or more farmers under the same aid scheme and where the overall area declared exceeds the agricultural area with a difference which falls within the measurement tolerance defined in accordance with

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Article 34(1), Member States may provide for a proportional reduction of the areas concerned. In that case, farmers concerned may appeal against the decision of reduction on the grounds that any of the other farmers concerned over-declared their areas beyond that tolerance to his detriment.

Article 29

Administrative controls of specific support

1 For each measure under the specific support for which administrative controls are technically possible, all applications should be checked. The controls shall in particular ensure that:

- a the eligibility conditions for specific support are fulfilled;
- b there is no double financing through other community schemes;
- c there is no overcompensation to farmers as regards financial contributions provided for in Articles 70(3) and 71(7) of Regulation (EC) No 73/2009 and,
- d when applicable, supporting documents have been submitted and that they are proving the eligibility.

2 Member States may, where appropriate, make use of evidence received from other services, bodies or organisations to verify the respect of eligibility criteria. However, it must be assured that the service, body or organisation in question is operating to a standard sufficient to control compliance with the eligibility criteria.

Section II

On-the-spot checks

Sub-section I

Common provisions

Article 30

Control rate

1 The total number of on-the-spot checks carried out each year shall cover at least 5 % of all farmers applying respectively for the single payment scheme, the single area payment scheme or area-related payments under specific support. The Member States shall assure that on-the-spot checks cover at least 3 % of the farmers applying for aid under each of other area-related aid schemes provided for under Titles III, IV and V of Regulation (EC) No 73/2009.

2 The total number of on-the-spot checks carried out each year shall cover at least:

- a the minimum control rate of 30 % or 20 % of the areas declared for the production of hemp as referred to in Article 39 of Regulation (EC) No 73/2009.

Where a Member State has already introduced a system of prior approval for such cultivation and has already notified the Commission of its detailed rules and conditions linked to that system prior to the entry into force of Regulation (EC) No 796/2004, any

amendments to those detailed rules or conditions shall be notified to the Commission without undue delay;

- b 5 % of all farmers applying for aid under the bovine aid schemes, headage payments or livestock unit payments for bovine animals under specific support or specific support based on the individual milk quota determined in accordance with Article 65 of Regulation (EC) No 1234/2007 or specific support based on the actual production of milk. However, where the computerised database for bovine animals does not offer the level of assurance and implementation necessary for the proper management of the aid schemes involved the percentage shall be increased to 10 %.

Those on-the-spot checks shall also cover at least 5 % of all animals per aid scheme for which aid is applied for;

- c 5 % of all farmers applying for aid under the ovine/caprine aid scheme and headage payments or livestock unit payments for ovine/caprine animals under specific support. Those on-the-spot checks shall also cover at least 5 % of all animals for which aid is applied for. However, where the computerised database for ovine/caprine animals provided for in Article 8 of Regulation (EC) No 21/2004 does not offer the level of assurance and implementation necessary for the proper management of the aid schemes involved, the percentage shall be increased to 10 % of the farmers;
- d 10 % of all farmers applying for specific support other than those referred to in paragraph 1 and points (b) and (c) of this paragraph, excluding the measure referred to in Article 68(1)(d) of Regulation (EC) No 73/2009;
- e 10 % of other services, bodies or organisations who provide evidence to verify the respect of eligibility criteria as referred to in Article 29(2).
- f 100 % of the mutual funds applying for support referred to in Article 68(1)(e) of Regulation (EC) No 73/2009;
- g as regards aid applications for the crop specific payment for cotton in accordance with Section 6 of Chapter 1 of Title IV of Regulation (EC) No 73/2009, 20 % of the inter-branch organisations approved in accordance with Article 91 of that Regulation and of which farmers declare to be a member in their single applications;
- h as regards applications for the aid for sugar beet and cane producers provided for in Section 7 of Chapter 1 of Title IV of Regulation (EC) No 73/2009, concerning controls at the sugar manufacturers on the quantity quota sugar obtained from sugar beets and cane delivered in accordance with Article 94 of that Regulation, at least 5 % of the applicants delivering to the manufacturer concerned.

3 Should on-the-spot checks reveal significant irregularities in the context of a given aid scheme or in a region or part of a region, the competent authority shall appropriately increase the number of on-the-spot checks during the current year and shall appropriately increase the percentage of farmers to be checked on-the-spot in the following year.

4 Where it is provided that particular elements of an on-the-spot check may be carried out on the basis of a sample, that sample shall guarantee a reliable and representative level of control. Member States shall establish the criteria for the selection of the sample. If the checks on that sample reveal irregularities, the extent and scope of the sample shall be extended appropriately.

Article 31

Selection of the control sample

1 Control samples for on-the-spot checks under this Regulation shall be selected by the competent authority on the basis of a risk analysis and representativeness of the aid applications submitted.

To provide the element of representativeness, the Member States shall select randomly between 20 % and 25 % of the minimum number of farmers to be subject to on-the-spot checks as provided for in Article 30(1) and (2).

However, if the number of farmers to be subject to on-the-spot checks exceeds the minimum number of farmers to be subject to on-the-spot checks as provided for in Article 30(1) and (2), the percentage of randomly selected farmers in the additional sample should not exceed 25 %.

2 The effectiveness of the risk analysis shall be assessed and updated on an annual basis:

- a by establishing the relevance of each risk factor;
- b by comparing the results of the risk based and randomly selected sample referred to in the second subparagraph of paragraph 1;
- c by taking into account the specific situation in the Member State.

3 The competent authority shall keep records of the reasons for the selection of each farmer for an on-the-spot check. The inspector carrying out the on-the-spot check shall be informed accordingly prior to the commencement of the on-the-spot check.

4 A partial selection of the control sample may, where appropriate, be made before the end of the application period in question, on the basis of available information. The provisional sample shall be completed when all relevant applications are available.

Article 32

Control report

1 Every on-the-spot check under this Section shall be the subject of a control report which makes it possible to review the details of the checks carried out. The report shall indicate in particular:

- a the aid schemes and applications checked;
- b the persons present;
- c the agricultural parcels checked, the agricultural parcels measured including, where applicable, the result of the measurements per measured agricultural parcel and the measuring methods used;
- d the number and type of animals found and, where applicable, the ear tag numbers, entries in the register and in the computerised databases for bovine and/or ovine/caprine animals and any supporting documents checked, the results of the checks and, where applicable, particular observations in respect of individual animals and/or their identification code;
- e whether notice was given to the farmer of the visit and, if so, the period of advance notification;

f indications of any specific control measures to be carried out in the context of individual aid schemes;

g indication of any further control measures carried out.

2 The farmer shall be given the opportunity to sign the report to attest his presence at the check and to add observations. Where irregularities are found the farmer shall receive a copy of the control report.

Where the on-the-spot check is carried out by means of remote sensing in accordance with Article 35, the Member States may decide not to give the farmer or his representative the opportunity to sign the control report if no irregularities are revealed during the check by remote-sensing. If irregularities are revealed as a consequence of such checks the opportunity to sign the report shall be given before the competent authority draws its conclusions from the findings with regard to any resulting reductions or exclusions.

Sub-section II

On-the-spot checks of the single application with regard to area-related aid schemes

Article 33

Elements of on-the-spot checks

On-the-spot checks shall cover all the agricultural parcels for which aid is requested under aid schemes listed in Annex I to Regulation (EC) No 73/2009, except those related to applications for seed aid in accordance with Article 87 of that Regulation. Nevertheless, the actual determination of the areas as part of an on-the-spot check may be limited to a sample of at least 50 % of the agricultural parcels for which an application has been submitted under the aid schemes established in Titles III, IV and V of Regulation (EC) No 73/2009 provided that the sample guarantees a reliable and representative level of control both in respect of area checked and aid claimed. When this sample check reveals anomalies the sample of agricultural parcels actually inspected shall be increased.

Member States may make use of remote sensing in accordance with Article 35 and Global Navigation Satellite Systems techniques where possible.

Article 34

Determination of areas

1 Agricultural parcel areas shall be determined by any means proven to assure measurement of quality at least equivalent to that required by applicable technical standard, as drawn up at Community level.

A measurement tolerance shall be defined by a buffer of maximum 1,5 m applied to the perimeter of the agricultural parcel. The maximum tolerance with regard to each agricultural parcel shall not, in absolute terms, exceed 1,0 ha.

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2 The total area of an agricultural parcel may be taken into account provided that it is fully utilised in accordance with the customary standards of the Member State or region concerned. In other cases the area actually utilised shall be taken into account.

In respect of the regions where certain features, in particular hedges, ditches and walls, are traditionally part of good agriculture cropping or utilisation practices, the Member States may decide that the corresponding area is to be considered part of the fully utilised area on condition that it does not exceed a total width to be determined by the Member States. That width must correspond to a traditional width in the region in question and shall not exceed 2 metres.

However, where Member States notified to the Commission, in conformity with third subparagraph of Article 30(2) of Regulation (EC) No 796/2004, prior to the entry into force of this Regulation, a width greater than 2 metres, this width may still be applied.

3 Any features referred to in the acts listed in Annex II to Regulation (EC) No 73/2009 or which may form part of the good agricultural and environmental condition as referred to in Article 6 of that Regulation and Annex III thereto shall form part of the total area of an agricultural parcel.

4 Without prejudice to Article 34(2) of Regulation (EC) No 73/2009, an agricultural parcel that contains trees shall be considered as eligible area for the purposes of the area-related aid schemes provided that agricultural activities or, where applicable, the production envisaged can be carried out in a similar way as on parcels without trees in the same area.

5 Where an area is used in common, the competent authorities shall notionally allocate it between the individual farmers in proportion to their use or right of use of it.

6 The eligibility of agricultural parcels shall be verified by any appropriate means. To that end, additional proof shall be requested where necessary.

Article 35

Remote sensing

1 Where a Member State makes use of the possibility, provided for in the second paragraph of Article 33, to carry out on-the-spot checks by remote sensing, it shall:

- a perform photo interpretation of satellite images or aerial photographs of all agricultural parcels per application to be checked with a view to recognising the ground cover and measuring the area;
- b carry out physical inspections in the field of all agricultural parcels for which photo interpretation does not make it possible to verify the accuracy of the declaration to the satisfaction of the competent authority.

2 The additional checks referred to in Article 30(3) shall be carried out by means of traditional on-the-spot checks if it is no longer possible to carry them out by means of remote sensing within the current year.

Article 36

On-the-spot checks related to special entitlements

Member States shall establish procedures for on-the-spot checks of farmers declaring special entitlements in order to ensure the fulfilment of the activation requirement referred to in Article 44 of Regulation (EC) No 73/2009.

Article 37

Elements of the on-the-spot checks related to applications for seed aid

On-the-spot checks related to applications for seed aid in accordance with Article 87 of Regulation (EC) No 73/2009 shall cover in particular:

- (a) checks at the level of the farmer applying for the aid:
 - (i) on all parcels to verify the species or variety group of seeds sown on each parcel declared;
 - (ii) on documents to verify at least the first destination of seed for which aid has been claimed;
 - (iii) any checks deemed necessary by the Member States to ensure that aid is not paid with regard to uncertified seed or seed from third countries;
- (b) if the first destination of the seed is a breeder or a seed establishment, additional checks at their premises to ensure that:
 - (i) the seed has actually been bought and paid by the breeder or seed establishment in accordance with the growing contract;
 - (ii) the payment of the seed is reflected in the financial accounts of the breeder or seed establishment;
 - (iii) the seed has actually been marketed for sowing. For that purpose, physical and documentary checks of the stock and financial accounts of the breeder or seed establishment shall be carried out;
- (c) where appropriate, checks at the level of the end users.

For the purposes of point (b)(iii) of the first paragraph, 'marketed' means holding available or in stock, displaying for sale, offering for sale, sale or delivery to another person.

Article 38

On-the-spot checks on approved inter-branch organisations

On-the-spot checks on approved inter-branch organisations in the framework of applications for aid under the crop specific payment for cotton provided for in Section 6 of Chapter 1 of Title IV of Regulation (EC) No 73/2009 shall verify the respect of the criteria for approval of those organisations and the list of their members.

Article 39

On-the-spot checks on sugar manufacturers

On-the-spot checks on sugar manufacturers in the framework of applications for sugar beet aid for sugar beet and cane producers provided for in Section 7 of Chapter 1 of Title IV of Regulation (EC) No 73/2009 shall verify:

- (a) the information in the delivery contracts provided by the farmer;
- (b) the correctness of the information on deliveries provided to the competent authority;
- (c) the certification of the weighting scales used for deliveries;
- (d) the results of the official laboratory analyses performed to determine the percentage of sucrose of the sugar beets and cane delivered.

Article 40

Verification of the tetrahydrocannabinol content in hemp growth

1 The system to be used by the Member States in accordance with Article 39(1) of Regulation (EC) No 73/2009 in order to determine the tetrahydrocannabinol (hereinafter referred to as THC) content of the crops grown shall be as set out in Annex I to this Regulation.

2 The competent authority of the Member State shall keep the records related to THC findings. At least such records shall comprise for each variety the results in terms of THC content from each sample expressed in percentage to two decimal places, the procedure used, the number of tests carried out, an indication of the point at which the sample was taken and measures taken at national level.

However, if the THC content of any sample exceeds that laid down in Article 39(1) of Regulation (EC) 73/2009, the Member State shall notify the Commission, by electronic means using the form made available to them by the Commission, by 15 November of the marketing year in question at the latest, a report on all the THC findings in respect of such variety. Such report shall indicate the results in terms of THC content from each sample expressed in percentage to two decimal places, the procedure used, the number of tests carried out, an indication of the point at which the sample was taken and measures taken at national level.

3 If an average of all the samples of given variety exceeds the THC content as laid down in Article 39(1) of Regulation (EC) No 73/2009, Member States shall use procedure B of Annex I to this Regulation for the variety concerned in the course of the following marketing year. This procedure shall be used in the course of the next marketing years unless all of the analytical results of given variety are below the THC content as laid down in Article 39(1) of Regulation (EC) No 73/2009.

If for the second year the average of all the samples of a given variety exceeds the THC content as laid down in Article 39(1) of Regulation (EC) No 73/2009, the Member State shall request authorisation to prohibit the marketing of such variety in accordance with Article 18 of Council Directive 2002/53/EC⁽¹⁾. Such request shall be sent to the Commission by 15 November of the marketing year in question at the latest. From the

following year the variety subject of this request is not eligible for direct payments in the Member State concerned.

4 Crops of hemp shall continue to be cultivated under normal growing conditions in accordance with local practice for at least 10 days from the date of the end of flowering so that the checks provided for in paragraphs 1, 2 and 3 can be made.

However, the Member States may authorise hemp to be harvested after flowering has begun but before the end of the 10-day period after the end of flowering, provided the inspectors indicate which representative parts of each plot concerned must continue to be cultivated for at least 10 days following the end of flowering for inspection purposes, in accordance with the method laid down in Annex I.

Sub-section III

On-the-spot checks of livestock aid applications

Article 41

Timing of on-the-spot checks

1 At least 60 % of the minimum rate of on-the-spot checks provided for in the second subparagraph of Article 30(2)(b) shall be conducted throughout the retention period of the aid scheme concerned. The remaining percentage of on-the-spot checks shall be spread over the year.

However, where the retention period takes place before lodging the claim or where it cannot be fixed in advance, on-the-spot checks provided for in the second subparagraph of Article 30(2)(b) shall be spread over the year.

2 At least 50 % of the minimum rate of on-the-spot checks provided for in Article 30(2)(c) shall be conducted throughout the retention period. However, the minimum rate of on-the-spot checks shall be fully conducted throughout the retention period in Member States where the system established by Regulation (EC) No 21/2004 as concerns ovines and caprines, in particular in relation to the identification of animals and the proper keeping of registers, is not fully implemented and applied.

Article 42

Elements of the on-the-spot checks

1 On-the-spot checks shall cover all livestock for which aid applications have been submitted under the aid schemes to be checked and, in the case of checks of the bovine aid schemes, also the unclaimed bovine animals.

On-the-spot checks shall include in particular a check that the number of animals present on the holding for which aid applications have been submitted and the number of unclaimed bovine animals corresponds to the number of animals entered in the registers and, in the case of bovine animals, to the number of animals notified to the computerised database for bovine animals.

2 In relation to the bovine aid schemes, on-the-spot checks shall also include checks:

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- a of the correctness of entries in the register and the notifications to the computerised database for bovine animals on the basis of a sample of supporting documents such as purchase and sales invoices, slaughter certificates, veterinary certificates and, where applicable, animal passports, in relation to animals for which aid applications were submitted in the six months prior to the on-the-spot check; however if anomalies are found, the check shall be extended to 12 months prior to the on-the-spot check;
- b that information held in the computerised database for bovine animals corresponds to the information given in the register on the basis of a sample in relation to animals for which aid applications were submitted in the six months prior to the on-the-spot check; however if anomalies are found the check shall be extended to 12 months prior to the on-the-spot check;
- c that all animals present on the holding and still kept under the retention obligation are eligible for the aid claimed;
- d that all bovine animals present on the holding are identified by ear tags, accompanied, where applicable, by animal passports and that they are recorded in the register and have been duly notified to the computerised database for bovine animals.

The checks referred to in the under point (d) shall be made individually for each individual male bovine still kept under the retention obligation, for which an application has been submitted for the special beef premium with the exception of those submitted in accordance with Article 110(6) of Regulation (EC) No 73/2009. In all other cases, the check on correct recording in the animal passports, the register and notification to the database may be made on the basis of a sample.

- 3 In relation to the ovine/caprine aid scheme, on-the-spot checks shall also include:
 - a a check on the basis of the register that all the animals for which aid application were submitted have been kept on the holding throughout the retention period;
 - b a check of the correctness of entries in the register in the six months prior to the on-the-spot check, based on a sample of supporting documents such as purchase and sales invoices and veterinary certificates covering the six months prior to the on-the-spot check; however if anomalies are found the check shall be extended to 12 months prior to the on-the-spot check.

Article 43

Control measures as regards on-the-spot checks in slaughterhouses

1 As regards the special beef premium provided for in Article 110(6) of Regulation (EC) No 73/2009 and the slaughter premium provided for in Article 116 of that Regulation and in cases where a Member State makes use of the possibilities provided for in Article 53 of that Regulation, on-the-spot checks shall be carried out in the slaughterhouses. In that case, Member States shall carry out on-the-spot checks either:

- a in at least 30 % of all slaughterhouses, selected on the basis of a risk analysis, in which case the checks shall cover a sample of 5 % of the total number of bovine animals which have been slaughtered in the slaughterhouse concerned during the 12 months prior to the on-the-spot check, or
- b in at least 20 % of the slaughterhouses which have been approved beforehand in accordance with particular criteria of reliability to be determined by the Member States and which are selected on the basis of a risk analysis, in which case the checks shall cover a sample of 2 % of the total number of bovine animals which have been slaughtered in the slaughterhouse concerned during the 12 months prior to the on-the-spot check.

2 The on-the-spot checks in slaughterhouses shall comprise an ex post scrutiny of documents, a comparison with the entries in the computerised database for bovine animals and checks of summaries relating to the slaughter certificates or information in place thereof, which were sent to other Member States in accordance with Article 78(3) of Regulation (EC) No 1121/2009.

3 On-the-spot checks in slaughterhouses shall comprise physical checks of slaughtering procedures carried out on the day of the on-the-spot check on the basis of a sample. Where necessary, it shall be checked whether the carcasses presented for weighing are eligible for aid.

Article 44

Control measures as regards the premium granted after export

1 As regards the slaughter premium granted for bovine animals exported to third countries in accordance with Article 116 of Regulation (EC) No 73/2009 and where a Member State makes use of the possibilities provided for in Article 53 of that Regulation, all loading operations shall be subject to on-the-spot checks, which shall be carried out as follows:

- a at the time of loading, it shall be verified that all bovine animals are identified by ear tags; furthermore, at least 10 % of the bovine animals so verified shall be checked individually with a view to verifying their identification;
- b at the time of the departure from the Community territory:
 - (i) where an official customs seal has been applied to the means of transport, it shall be checked that the seal is undamaged; If the seal is undamaged a sample check shall only be carried out if there are doubts as to the regularity of the load;
 - (ii) where no official customs seal has been applied to the means of transport or where a customs seal is damaged, at least 50 % of bovine animals that were individually checked at the time of loading shall be checked again.

2 The animal passports shall be surrendered to the competent authority in accordance with Article 6(5) of Regulation (EC) No 1760/2000.

3 The paying agency shall scrutinise the aid applications on the basis of the payment files and other available information, paying particular attention to the documents relating to the export and the comments of the competent control authorities and shall check whether the animal passports have been surrendered in accordance with paragraph 2.

Article 45

Special provisions as regards the control report

1 Where Member States carry out on-the-spot checks pursuant to this Regulation in conjunction with inspections pursuant to Regulation (EC) No 1082/2003 the control report provided for in Article 32 of this Regulation shall be supplemented by reports in accordance with Article 2(5) of Regulation (EC) No 1082/2003.

2 With regard to the on the-spot-checks in slaughterhouses provided for in Article 43(1) and (2), the control report provided for in Article 32 may consist of an indication in the slaughterhouse accounts showing which animals have been subject to the checks. With regard to the physical checks of slaughtering procedures provided for in Article 43(3), the report shall

include, *inter alia*, the identification codes, the carcass weights and the dates of slaughter in relation to all animals slaughtered and checked on the day of the on-the-spot check.

3 With regard to the checks provided for in Article 44, the control report may consist only of an indication of the animals so checked.

4 Where on-the-spot checks conducted in accordance with this Regulation reveal cases of non-compliance with the provisions of Title I of Regulation (EC) No 1760/2000 or Regulation (EC) No 21/2004, copies of the control report provided for in Article 32 of this Regulation shall be sent without delay to the authorities responsible for the implementation of those Regulations.

Sub-section IV

On-the-spot checks of specific support

Article 46

Special provisions as regards specific support

1 As regards the specific support provided for under Article 68 of Regulation (EC) No 73/2009, the Member States shall, apply the provisions of this Title. However, if this is not appropriate because of the structure of the scheme concerned, the Member States shall provide controls ensuring a control level equivalent to that laid down in this Title.

The Member States shall in particular verify;

- a when controlling applications for payments by mutual funds as provided for in Article 68(1)(e) of Regulation (EC) No 73/2009, that:
 - (i) farmers were effectively eligible to the compensation paid by the fund;
 - (ii) the compensation was effectively paid to affiliated farmers in accordance with Article 71 of Regulation (EC) No 73/2009;
- b when checking on-the-spot investment operations to be supported under specific support provided for in Article 68 of Regulation (EC) No 73/2009, that the investment has been realised.

The checks referred to in point (a) of the second subparagraph may be carried out by using a sample of at least 10 % of the farmers concerned.

2 Provided that the Member State ensures that the effectiveness of the controls is at least equal to that achieved when the controls are carried out by on-the-spot checks, controls at farm level may be replaced by administrative controls or checks at the level of services, bodies or organisations which provide evidence to verify the respect of eligibility criteria as referred to in Article 29(2).

CHAPTER III

Controls relating to cross-compliance

Section I

Common provisions

Article 47

General rules concerning non-compliance

1 For the purposes of this Chapter a ‘repeated’ non-compliance means the non-compliance with the same requirement, standard or the obligation referred to in Article 4 determined more than once within a consecutive period of three calendar years, provided the farmer has been informed of a previous non-compliance and, as the case may be, has had the possibility to take the necessary measures to terminate that previous non-compliance;

2 The ‘extent’ of a non-compliance shall be determined taking account, in particular, of whether the non-compliance has a far-reaching impact or whether it is limited to the farm itself;

3 The ‘severity’ of a non-compliance shall depend, in particular, on the importance of the consequences of the non-compliance taking account of the aims of the requirement or standard concerned;

4 Whether a non-compliance is of ‘permanence’ shall depend, in particular, on the length of time for which the effect lasts or the potential for terminating those effects by reasonable means.

Article 48

Competent control authority

1 The specialised control bodies shall bear the responsibility to carry out the controls and checks on the respect of the requirements and standards in question.

The paying agencies shall bear the responsibility for the fixing of reductions or exclusions in individual cases in accordance with Chapter III of Title IV.

2 By way of derogation from paragraph 1, Member States may decide that controls and checks in relation to all or certain requirements, standards, acts, or areas of cross-compliance shall be carried out by the paying agency provided that the Member State guarantees that the effectiveness of the controls and checks is at least equal to that achieved when the controls and checks are carried out by a specialised control body.

Section II

Administrative controls

Article 49

Administrative controls

Depending of the requirements, standards, acts or areas of cross-compliance in question, Member States may decide to carry out administrative controls, in particular those already provided for under the control systems applicable to the respective requirement, standard, act or area of cross-compliance.

Section III

On-the-spot checks

Article 50

Minimum control rate

1 The competent control authority shall, with regard to the requirements and standards for which it is responsible, carry out on-the-spot checks on at least 1 % of all farmers submitting aid applications under support schemes for direct payments within the meaning of Article 2(d) of Regulation (EC) No 73/2009 and for which the competent control authority in question is responsible. The competent control authority shall also, with regard to the requirements and standards for which it is responsible, carry out checks on at least 1 % of all farmers subject to cross-compliance obligations according to Articles 85t and 103z of Regulation (EC) No 1234/2007 in the calendar year in question and for which the competent control authority in question is responsible.

The minimum control rate referred to in the first subparagraph may be reached at the level of each competent control authority or at the level of each act or standard or group of acts or standards. In the cases where the controls are not carried out by the paying agency as provided for in Article 48, this minimum control rate may however be reached at the level of each paying agency.

Where the legislation applicable to the act and standards already fixes minimum control rates, that rate shall insofar be applied instead of the minimum rate mentioned in the first subparagraph. Alternatively, Member States may decide that any instances of non-compliance detected in the course of any on-the-spot checks under the legislation applicable to the acts and standards which are performed outside the sample mentioned in the first subparagraph, shall be reported to, and followed up by, the competent control authority in charge of the act or standard concerned. The provisions of this Title shall apply.

2 When establishing the minimum control rate referred to in paragraph 1 of this Article, the required actions as referred to in Article 23(2) or in the third subparagraph of Article 24(2) of Regulation (EC) No 73/2009 shall not be taken into account.

3 Should on-the-spot checks reveal a significant degree of non-compliance with a given act or standard, the number of on-the-spot checks to be carried out for this act or standard in the

following control period shall be increased. Within a specific act the competent control authority may decide to limit the scope of these further on-the-spot checks to the most frequently infringed requirements.

Article 51

Selection of the control sample

1 Without prejudice to checks carried out as a follow-up of non-compliances brought to the attention of the competent control authority in any other way, the selection of each of the samples of farms to be checked in accordance with Article 50 shall be based, where applicable, on a risk analysis according to the applicable legislation, or on a risk analysis appropriate to the requirements or standards. That risk analysis may be based on the level of an individual farm or on the level of categories of farms or geographical zones or, in the case of point (b) of the second subparagraph of paragraph 5 of this Article, on the level of undertakings.

The risk analysis may take into account one or both of following:

- a a farmer's participation in the farm advisory system provided for in Article 12 of Regulation (EC) No 73/2009;
- b a farmer's participation in a certification system if the scheme in question is relevant for the requirements and standards concerned.

Without prejudice to Article 50(1), a Member State may decide to select farmers receiving direct payments and farmers subject to cross-compliance obligations under Articles 85t and 103z of Regulation (EC) No 1234/2007 under the same risk analysis.

2 To provide the element of representativeness, between 20 % and 25 % of the minimum number of farmers to be subject to on-the-spot checks as provided for in the first subparagraph of Article 50(1), shall be selected randomly.

However, if the number of farmers to be subject to on-the-spot checks exceeds the minimum number of farmers to be subject to on-the-spot checks as provided for in the first subparagraph of Article 50(1), the percentage of randomly selected farmers in the additional sample shall not exceed 25 %.

3 A partial selection of the control sample may, where appropriate, be made before the end of the application period in question, on the basis of available information. The provisional sample shall be completed when all relevant applications are available.

4 The samples of farmers to be checked in accordance with Article 50 shall be selected from the samples of farmers which were already selected pursuant to Articles 30 and 31 and to whom the relevant requirements or standards apply. However, the sample referred to in the second sentence of the first subparagraph of Article 50(1) shall be selected from farmers subject to the application of Articles 85t and 103z of Regulation (EC) No 1234/2007 for the calendar year in question.

5 By way of derogation from paragraph 4, the samples of farmers to be checked in accordance with Article 50 may be selected amongst the population of farmers submitting aid applications under support schemes for direct payments within the meaning of Article 2(d) of Regulation (EC) No 73/2009 and amongst farmers subject to the application of Articles 85t and 103z of Regulation (EC) No 1234/2007 and who are under the obligation to respect the relevant requirements or standards.

In that case:

- a where it is concluded, on the basis of the risk analysis applied at farm level, that non-beneficiaries of direct aid represent a higher risk than the farmers who applied for aid,

farmers who applied for aid may be replaced by non-beneficiaries; in that case, the overall number of farmers checked shall, nevertheless, attain the control rate provided for in Article 50(1); the reasons for such replacements shall be properly justified and documented;

- b if more effective, the risk analysis may be performed at the level of undertakings, in particular slaughterhouses, traders or suppliers rather than at farm level; in that case, the farmers thus checked may be counted towards the control rate provided for in Article 50(1).

6 It may be decided to proceed by a combination of the procedures set out in paragraphs 4 and 5 in the case where such a combination increases the effectiveness of the control system.

Article 52

Determination of the compliance with the requirements and standards

1 Where applicable, the respect of the requirements and standards shall be determined by the use of means as stipulated in the legislation applicable to the requirement or standard in question.

2 In other cases and where appropriate, the determination shall be carried out by the use of any appropriate means defined by the competent control authority which ensure precision at least equivalent to that required for official determinations under the national rules.

3 Where appropriate, the on-the-spot checks may be conducted by the application of remote-sensing techniques.

Article 53

Elements of the on-the-spot checks

1 In performing the checks on the sample provided for in Article 50, the competent control authority shall ensure that all farmers thus selected are checked with regard to their compliance with the requirements and standards for which it is responsible.

Notwithstanding the first subparagraph, where the minimum control rate is reached at the level of each act or standard or group of acts or standards as provided for in the second subparagraph of Article 50(1), the farmers selected shall be checked with regard to their compliance with the act or standard or group of acts and standards in question.

In general, each farmer selected for an on-the-spot check shall be checked at a time when most requirements and standards for which he was selected may be checked. However, Member States shall ensure that an appropriate level of control for all requirements and standards is achieved during the year.

2 On-the-spot checks shall, where applicable, cover all the agricultural land of the holding. Nevertheless, the actual inspection in the field as part of an on-the-spot check may be limited to a sample of at least half of the agricultural parcels concerned by the requirement or standard on the holding provided that such sample guarantees a reliable and representative level of control in respect of requirements and standards. When this sample check reveals non-compliances, the sample of agricultural parcels actually inspected shall be increased.

Furthermore, where the legislation applicable to the act or standards provides so, the actual inspection of the compliance with the requirements and standards as part

of an on-the-spot check may be limited to a representative sample of the objects to check. However, the Member States shall assure that the checks are carried out on all requirements and standards for which the compliance may be checked at the time of the visit.

3 The checks referred to in paragraph 1 shall, as a general rule, be carried out as part of one control visit and shall consist of a verification of the requirements and standards the compliance with which may be checked at the time of that visit, aiming to detect any possible non-compliance with those requirements and standards and, in addition, to identify cases to be submitted for further checks.

4 Provided that the Member State ensures that the effectiveness of the controls is at least equal to that achieved when the controls are carried out by on-the-spot checks, controls at farm level may be replaced by administrative controls or checks at the level of undertakings as referred to in point (b) of the second subparagraph of Article 51(5).

5 In performing the on-the-spot checks, Member States may make use of objective control indicators specific to certain requirements and standards provided they ensure that the effectiveness of the control of the requirements and standards concerned is at least equal to on-the-spot checks performed without the use of indicators.

The indicators shall have a direct link to the requirements or standards they represent and cover all elements to be checked when controlling that or those requirements or standards.

6 On-the-spot checks related to the sample provided for in Article 50(1) shall be carried out within the same calendar year where the aid applications are submitted.

Article 54

Control report

1 Every on-the-spot check under this Chapter, regardless whether the farmer in question was selected for the on-the-spot check in accordance with Article 51 or as a follow-up of non-compliances brought to the attention of the competent control authority in any other way, shall be the subject of a control report to be established by the competent control authority.

The report shall be divided into the following parts:

- a a general part containing, in particular, the following information:
 - (i) the farmer selected for the on-the-spot check;
 - (ii) the persons present;
 - (iii) whether notice of the visit was given to the farmer and, if so, the period of advance notification;
- b a part reflecting separately the checks carried out in respect of each of the acts and standards and containing, in particular, the following information:
 - (i) the requirements and standards subject to the on-the-spot check;
 - (ii) the nature and extent of checks carried out;
 - (iii) the findings;
 - (iv) the acts and standards in relation to which non-compliances are found;

- c an evaluation part giving an assessment of the importance of the non-compliance in respect of each act and/or standard on the basis of the criteria ‘severity’, ‘extent’, ‘permanence’ and ‘repetition’ in accordance with Article 24(1) of Regulation (EC) No 73/2009 with an indication of any factors that should lead to an increase or decrease of the reduction to be applied.

Where provisions relating to the requirement or standard in question leave a margin not to further pursue the non-compliance found, the report shall make a corresponding indication. The same shall apply in the case where a Member State grants a period for the compliance with newly introduced Community standards as referred to in Article 26(1) of Regulation (EC) No 1698/2005 or a period for the compliance of young farmers with the existing Community standards referred to in that Article.

- 2 The farmer shall be informed of any determined non-compliance within three months after the date of the on-the-spot check.

Unless the farmer has taken immediate remedial action putting an end to the non-compliance found in the sense of Article 24(2) of Regulation (EC) No 73/2009, the farmer shall be informed that remedial action shall be taken pursuant to that provision within the time limit set in the first subparagraph.

Where a Member State makes use of the possibility not to apply a reduction or exclusion as provided for in Article 23(2) of Regulation (EC) No 73/2009, the farmer concerned shall be informed, at the latest within one month after it is decided not to apply the reduction or exclusion of the payment, that remedial action shall be taken.

- 3 Without prejudice to any particular provisions contained in the legislation applicable to the requirements and standards, the control report shall be finalised within one month of the on-the-spot check. However, that period may be extended to three months under duly justified circumstances, in particular if chemical or physical analysis so requires.

Where the competent control authority is not the paying agency, the report shall be sent to the paying agency or the coordinating authority within a month of its finalisation.

- (1) [OJ L 193, 20.7.2002, p. 1.](#)